IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

THURSDAY, THE 23RD NOVEMBER 2006 / 2ND AGRAHAYANA 1928

Crl.MC.No. 3532 of 2006()

CC.21/2006 of ENQUIRY COMMISSIONER & SPL.JUDGE, KOZHIKODE

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PETITIONER:

K.TAHIR, SON OF K.T.C.BEERAN,
AGED 42 YEARS, HEAD MASTER,
A.U.P.SCHOOL, PAZHUR.

BY ADV. SRI.M.P.MOHAMMED ASLAM

RESPONDENTS:

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1. DEPUTY SUPERINTENDENT OF POLICE,
VIGILANCE AND ANTI-CORRUPTION BUREAU,
NORTHERN RANGE, KOZHIKODE.

2. STATE OF KERALA,
REP. BY PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM.

BY PUBLIC PROSECUTOR SRI.PUZHAKKARA MUHAMMED

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 23/11/2006, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R.BASANT, J.

Crl.M.C.NO.3532 OF 2006

Dated this the 23rd day of November, 2006.

ORDER

The petitioner is the Headmaster of an aided Upper Primary School. He, along with three others, faces indictment in a prosecution before the Special Judge, Kozhikkode for the offence punishable inter alia under Sections 420 & 471 I.P.C. The crux of the allegations against the petitioner and the co-accused is that to facilitate continuation of the post of Arabic teacher of the 4th accused, the accused persons in furtherance of a criminal conspiracy created false documents to make it appear that 4 students who were really students of another school had been admitted to the school of the petitioner. After conducting an investigation, final report has been filed before the Special Judge. The Special Judge has taken cognizance. The learned Special Judge has not framed charges yet. On receipt of the summons, process was issued by the court and the petitioner has rushed to this Court with the prayer that criminal prosecution against him may be quashed. The petitioner has already entered appearance before the learned Special Judge and he has been enlarged on bail, it is further submitted.

2. What are the grounds on which the prosecution is liable to be quashed ? Why have the petitioner without and before requesting the learned Special Judge to discharge him, rushed to this Court with this petition ? The only submission is that the allegations cannot be accepted. There is no case of any forgery prompted. The students must have been attending both schools. In these circumstances, the petitioner does not deserve to stand trial.

3. I am certainly of the opinion that normally and ordinarily this contention must be raised and discharge must be claimed from the court which is seized of the matter. Of course, it is trite in law that the mere availability of such a procedure to claim discharge will not fetter the hands of this Court to invoke the powers under Section 482 Cr.P.C. But that certainly cannot be the daily occurrence. Satisfactory and convincing reasons must be available to persuade this Court to invoke the powers under Section 482 Cr.P.C before the court concerned is requested to discharge the accused. In every case, in the absence of special and adequate reasons, a claim for discharge must normally be made before the court concerned which is

seized of the matter, and which has to frame charges after considering the entire gram of material placed before it.

4. Suffice it to say that in the facts and circumstances of this case, I do not find any compelling reasons which should persuade this Court now to invoke the powers under Section 482 Cr.P.C. Needless to say, the petitioner, before charges are framed, can claim and the court concerned is bound to consider such plea for discharge in accordance with law and expeditiously.

5. This Crl.M.C is, dismissed, with the above observation.

R.BASANT
JUDGE

rtr/